

DEFENDANT: JORGE GRANDON
CASE NUMBER: 1:16-CR-10320-GAO
DISTRICT: Massachusetts

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A. ☒ The court adopts the presentence investigation report without change.
- B. ☐ The court adopts the presentence investigation report with the following changes. (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)
1. ☐ Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics)
 2. ☐ Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)
 3. ☐ Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)
 4. ☐ Additional Comments or Findings: (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)
- C. ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.
Applicable Sentencing Guideline: (if more than one guideline applies, list the guideline producing the highest offense level) _____

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply)

- A. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case: (Specify)
 - ☐ substantial assistance (18 U.S.C. § 3553(e))
 - ☒ the statutory safety valve (18 U.S.C. § 3553(f))
- C. ☐ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: (BEFORE DEPARTURES OR VARIANCES)

Total Offense Level: 25
Criminal History Category: I
Guideline Range: (after application of §5G1.1 and §5G1.2) 57 to 71 months
Supervised Release Range: 2 to 5 years
Fine Range: \$ 20,000.00 to \$ 11,000,000

- ☒ Fine waived or below the guideline range because of inability to pay.

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IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

- A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary)*
- C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual.
(Also complete Section V.)
- D. ☒ The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

A. The sentence imposed departs: *(Check only one)*

- ☐ above the guideline range
☐ below the guideline range

B. Motion for departure before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)*

1. Plea Agreement

- ☐ binding plea agreement for departure accepted by the court
☐ plea agreement for departure, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion.

2. Motion Not Addressed in a Plea Agreement

- ☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected
☐ joint motion by both parties

3. Other

- ☐ Other than a plea agreement or motion by the parties for departure

C. Reasons for departure: *(Check all that apply)*

- | | | |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |
| | | <input type="checkbox"/> 5K3.1 Early Disposition Program (EDP) |
- ☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. State the basis for the departure. *(Use Section VIII if necessary)*

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VI. COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A. The sentence imposed is: *(Check only one)*

- ☐ above the guideline range
☒ below the guideline range

B. Motion for a variance before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**
 - ☐ binding plea agreement for a variance accepted by the court
 - ☐ plea agreement for a variance, which the court finds to be reasonable
 - ☐ plea agreement that states that the government will not oppose a defense motion for a variance
2. **Motion Not Addressed in a Plea Agreement**
 - ☐ government motion for a variance
 - ☐ defense motion for a variance to which the government did not object
 - ☐ defense motion for a variance to which the government objected
 - ☐ joint motion by both parties
3. **Other**
 - ☐ Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance *(Check all that apply)*

- ☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)
- | | | |
|---|--|--|
| <input type="checkbox"/> Mens Rea | <input type="checkbox"/> Extreme Conduct | <input type="checkbox"/> Dismissed/Uncharged Conduct |
| <input type="checkbox"/> Role in the Offense | <input type="checkbox"/> Victim Impact | |
| <input type="checkbox"/> General Aggravating or Mitigating Factors <i>(Specify)</i> _____ | | |
- ☒ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
- | | |
|---|---|
| <input type="checkbox"/> Aberrant Behavior | <input type="checkbox"/> Lack of Youthful Guidance |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender |
| <input type="checkbox"/> Diminished Capacity | <input checked="" type="checkbox"/> Physical Condition |
| <input type="checkbox"/> Drug or Alcohol Dependence | <input type="checkbox"/> Pre-sentence Rehabilitation |
| <input type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse |
| <input type="checkbox"/> Family Ties and Responsibilities | <input type="checkbox"/> Other: <i>(Specify)</i> _____ |
- ☐ Issues with Criminal History: *(Specify)* _____
- ☒ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
- ☒ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
- ☒ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
- ☐ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))
- ☒ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))
- ☒ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
- ☒ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) *(Specify in section D)*
- ☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))
- | | | |
|---|--|--|
| <input type="checkbox"/> Acceptance of Responsibility | <input type="checkbox"/> Conduct Pre-trial/On Bond | <input type="checkbox"/> Cooperation Without Government Motion for Departure |
| <input type="checkbox"/> Early Plea Agreement | <input type="checkbox"/> Global Plea Agreement | |
| <input type="checkbox"/> Time Served <i>(not counted in sentence)</i> | <input type="checkbox"/> Waiver of Indictment | <input type="checkbox"/> Waiver of Appeal |
- ☐ Policy Disagreement with the Guidelines (*Kimbrough v. U.S.*, 552 U.S. 85 (2007): *(Specify)* _____)
- ☐ Other: *(Specify)* _____

D. State the basis for a variance. *(Use Section VIII if necessary)*

The sentence was imposed for the reasons stated on the record open court, a transcript of which statement is attached hereto and incorporated herein.

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VII. COURT DETERMINATIONS OF RESTITUTION

A. ☒ Restitution Not Applicable.

B. Total Amount of Restitution: \$ _____

C. Restitution not ordered: (Check only one)

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons. (Explain)

D. ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE (If applicable)

Defendant's Soc. Sec. No.: 000-00-6267

Defendant's Date of Birth: 1969

Defendant's Residence Address: Boston, MA 02121

Defendant's Mailing Address: Same as Above

Date of Imposition of Judgment

05/01/2019

Signature of Judge

George A. O'Toole, Jr U.S.D.J.

Name and Title of Judge

Date Signed

5/2/19

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action
No. 16-CR-10320 GAO

v.

May 1, 2019

JORGE GRANDON,

Defendant.

TRANSCRIPT OF STATEMENT OF REASONS

BY THE HONORABLE GEORGE A. O'TOOLE

UNITED STATES DISTRICT COURT

JOHN J. MOAKLEY U.S. COURTHOUSE

1 COURTHOUSE WAY

BOSTON, Massachusetts 02210

KATHLEEN I. SILVA, RPR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 7209
Boston, Massachusetts 02210
kathysilva@verizon.net

Mechanical Steno - Computer-Aided Transcript

* * * * *

THE COURT: Let me first be clear that I adhere to the view I expressed in an earlier sentencing, not because I expressed it in an earlier sentencing but because I continue to believe that that's the proper analysis. I would change my view if I were convinced that I should, but I'm not.

Without going back into it, I simply think the analogy to the crack powder disparity that received a lot of attention is not a very persuasive one for various reasons, including the magnitude of the difference in ratios, 100-to-one versus ten-to-one. As I pointed out the other day, to say that one crime involving a purer substance is punished presumptively or can be punished more severely than a substance that is not as pure is not a remarkable proposition, it seems to me, and you could see the harsher punishment potential for the purer drug as an aggravation of the norm or you could see the lesser punishment of the mixture as a mitigation of the norm. It depends on what you choose as the norm. We don't have any guidance on that. It's not unusual for more harmful activity to be punished more severely than less harmful activity.

So for that reason I am not persuaded by arguments directed at the structural difference.

You know, in drug cases, the statutory factors that are relevant are always pretty much the same. The nature and circumstances of the offense, the harm that the offense does

1 not only to others but including the defendants, of course, who
2 suffer themselves from it. I recognize that. But the need for
3 appropriate punishment for serious offenses, these are
4 significant quantities.

5 I do want to note that while there is a specific
6 quantity at issue here from the seizure that occurred, the
7 presentence report also pretty clearly indicates that while
8 this is the seizure or the episode that has the specifics,
9 there were other episodes. In other words, I don't have any
10 numbers for it, but paragraph 36, for example, of the PSR notes
11 that the defendant was intercepted several times over wiretaps
12 ordering methamphetamine and surveillance units sometimes
13 observed the defendant going to Metz's apartment. So I don't
14 think it's an undue extrapolation to understand that the
15 quantity involved here is less than the quantity involved
16 certainly in the conspiracy count, if not the actual
17 substantive count here.

18 And so appropriate punishment of the offense, both
19 general and specific deterrence, are factors as I think I've
20 indicated I think is common to the drug cases.

21 So I think the government's recommendation is a
22 realistic one, and I will adopt it.

23
24
25